

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**WILLIAM WALLS, Solicitor, 1
Muir Gardens, St Andrews**

1. A Complaint dated 2 October 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Walls, Solicitor, 1 Muir Gardens, St Andrews (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 12 February 2015 and notice thereof was duly served on the Respondent.
4. The hearing took place on 12 February 2015. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Simon Collins, Solicitor Advocate, Edinburgh.

5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. No evidence was led.

6. The Tribunal found the following facts established
 - 6.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 21 September 1955. He was enrolled in the Register of Solicitors on 24 January 1980. Between 1 May 2000 and 30 November 2012 the Respondent was a partner in the firm of McQuittys in Fife.

 - 6.2 The Respondent acted on behalf of client A in respect of the purchase of Property 1. He was instructed by A on or about 22 September 2009 with initial instructions to offer £280,000 with the assistance of a loan of £205,000, advanced by Abbey National. Subsequently the Respondent intimated to the seller's agents that the price agreed between the purchaser and the seller was to be amended to £250,000. A new offer was submitted reflecting this. The purchaser was issued with a fresh loan offer of £187,715 advanced by Abbey National. This loan was provided along with instructions that expressly incorporated the Council of Mortgage Lenders Handbook as well as Part B of the Mortgage Offer Conditions and the Valuation for Mortgage Purposes Report. The instructions stated that the submission of a clear Certificate of Title would be confirmation that all instructions had been complied with. A clear Certificate of Title stating the purchase price of property 1 as £250,000 was issued by the Respondent to Abbey National confirming *inter alia* that he had complied with the aforementioned instructions accompanying the loan offer. The Respondent failed to comply with these instructions and misled the lender by submitting that the purchase price was £250,000 when the actual price paid by A was £187,500. The transaction

settled on 11 December 2009. The purported balance of the purchase price amounted to £62,500. That sum was provided to the Respondent by a third party, B, on 30 November 2009. In contravention of the requirements of condition 5.8 of the Council of Mortgage Lenders Handbook the Respondent drew down the loan funds and settled the transaction without advising the lender that the borrower/purchaser was not providing the balance of the purchase price from his own funds. Moreover the Respondent failed to advise the lender that he knew that the seller of the property would be returning the sum of £62,500 to B following settlement of the transaction. Believed and averred that the seller did so on 21 December 2009.

- 6.3 In 2008 the Respondent acted on behalf of D and E in connection with the purchase of Property 2 which was a shop. A disposition on file narrated that G had sold the property to E for £12,000 and with the consent and concurrence of E disposed the property to D for a consideration of £12,000. Subsequently in April 2010 the Respondent acted for C in the purchase of Property 2. The Respondent prepared a disposition which narrated that D, considering that they had sold the subjects to E at a price of £18,000, and considering that E had sold the subjects to C at a price of £63,000, therefore D with the consent of E disposed the subjects to C. The purchaser had the benefit of a loan of £44,100 from Royal Bank of Scotland plc. The Respondent acted for the bank in connection with the loan. The balance of the price was paid to the Respondent by two third parties D and E, D to the extent of £10,000 and E who was also the seller of the property, to the extent of £5,000. The Respondent failed to report to the lender (a) that E had owned the property for less than six months and (b) that between the sale from D to E and the sale from E to C there had been a three hundred and fifty percent increase in the purchase price, both

being matters which the Respondent should reasonably have expected the lender to consider important in deciding whether to lend to the borrower. The Respondent drew down the loan funds, settled the transaction and then transferred the proceeds of sale to D and E where £28,000 was transferred to D and £20,626.90 was transferred to E, without advising the lender that the third parties (one of which was the seller) were paying the balance of the price. The Respondent failed to report to the lender (a) that the seller of the property (E) was not the heritable proprietor and (b) that upon settlement of the transaction the proceeds of sale were paid over to the seller and the owner (D and E) by the purchaser (C). The Respondent failed to advise the lender that he was acting for the purchaser, the seller and the owner of the property in what was at least potentially a situation where a conflict of interest could arise. Moreover in relation to this transaction the Respondent failed to provide the owner or the seller of the property with a Terms of Business letter as required by the Solicitors' (Scotland) (Client Communication) Practice Rules 2005 rule 3. Instead a Terms of Business letter was only sent personally to F, a Director of E. Neither was the owner of the property, the seller or the purchaser furnished with the conflict of interest letter required by the Solicitors (Scotland) Practice Rules 1986 rule 5(2). The Respondent further failed to notify the lender that settlement which had been originally scheduled for 9 April 2010 was effected on 15th April 2010.

- 6.4 The Respondent was instructed to act on behalf of H in respect of the purchase of Property 3. The transaction took place in April/May 2011. In respect of this transaction the Respondent received the sum of £11,570.60 from his client on 28 April 2011 in the form of a bank draft. He failed to obtain confirmation from the bank of the name of the account against which the draft had been drawn. The Respondent accepted a

photocard driving licence as evidence of his client's identity and address. The Respondent was put on notice that this information was not accurate. In particular he received a telephone call from I who stated that she was H's wife and who stated that H no longer lived at the address given on the driving licence (property 4). Thereafter, the Respondent failed to establish H's marital status or address and thereby identify and verify his H's identity. In view of all of the foregoing the Respondent was in breach of his obligation to comply with regulations 7 and 8(2) of the Money Laundering Regulations 2007 by failing to apply customer due diligence measures and conduct ongoing monitoring of his relationship with H.

6.5 In the knowledge of the facts and circumstances disclosed in the immediately preceding paragraph the Respondent accepted instructions to make payment to a third party, namely J of the sum of £11,546.60 being the sum received by the Respondent's firm in the form of a bank draft on 28 April 2011 less bank charges of £24. On 23 May 2011 the Respondent made a payment to J in the amount of £11,546.60 without having carried out any checks to verify that he was not breaching the relevant sections of part 7 of the Proceeds of Crime Act 2002 and of the Money Laundering Regulations 2007. The Respondent failed to apply enhanced customer due diligence measures as required by regulation 14 of the Money Laundering Regulations 2007 despite this being an obviously high risk transaction. Moreover the Respondent failed to make a suspicious activity report in relation to this matter to the Serious Organised Crime Agency as he was required to do so by the Proceeds of Crime Act 2002.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 his failure to comply with the requirements of the CML Handbook;
 - 7.2 his breach of Rule 24 of the Solicitors' (Scotland) Accounts etc Rules 2001;
 - 7.3 his breach of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986;
 - 7.4 his breach of Rule 3 of the Solicitors (Scotland) (Client Communication) Practice Rules 2005;
 - 7.5 his failure to act with the upmost propriety towards two lenders he acted for by withholding information from those lenders;
 - 7.6 his failure to notify a lender of a delay in settlement; and
 - 7.7 his failure to comply with Regulations 7, 8(2) and 14 of the Money Laundering Regulations 2007.
8. Having heard the Solicitor Advocate for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12 February 2015. The Tribunal having considered The Complaint dated 2 October 2014 at the instance of the Council of the Law Society of Scotland against William Walls, Solicitor, 1 Muir Gardens, St Andrews; Find the Respondent guilty of Professional Misconduct in respect of his failure to comply with the requirements of the CML Handbook, his breach of Rule 24 of the Solicitors' (Scotland) Accounts etc Rules 2001; his breach of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986, his breach of Rule 3 of the Solicitors (Scotland) (Client Communication) Practice Rules 2005, his failure to act with the upmost propriety towards two lenders he

acted for by withholding information from those lenders, his failure to notify a lender of a delay in settlement and his failure to comply with Regulations 7 ,8(2) and 14 of the Money Laundering Regulations 2007; Suspend the Respondent from practice for a period of five years; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; and Direct that publicity will be deferred until the conclusion of any criminal proceedings regarding the Respondent and Direct thereafter that publicity will be given to this decision and that this publicity should include the name of the Respondent and may but has no need to include the names of anyone other than the Respondent.

(signed)

Alan McDonald

Vice Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Alan McDonald
Vice Chairman

NOTE

A Joint Minute was lodged in which the averments of fact, duty and misconduct in the Complaint were admitted. No evidence was led.

Three Inventories of Productions for the Complainers relating to the three transactions had been lodged with the Tribunal.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch indicated that he was grateful to Mr Collins for becoming involved in this case at a late stage and helping to resolve matters. Mr Lynch advised that the Respondent had been a solicitor since 1980 latterly practising as McQuittys in Cupar. Between 2007 and 2012 there were a number of Guarantee Fund inspections of the firm and during that period the Respondent was either the cash room partner or cash room manager. Mr Lynch indicated that the matters outlined in the Complaint came to light as a result of these inspections.

Mr Lynch advised that at that time the firm was in financial difficulties and there were arrears of VAT and PAYE. Mr Lynch stated that the bank was dishonouring cheques and the Respondent was in the position of having to inject funds into the firm. Mr Lynch advised that the Respondent is no longer practising and has no intention to return to practice.

In relation to the first transaction referred to at paragraph 4(a) of the Complaint Mr Lynch indicated that he would refer to the productions which he had lodged. Mr Lynch advised that the initial instructions from the purchaser came through an intermediary, a Mr Z, who was also involved in other transactions with the firm. Mr Lynch stated that the client identification document confirms that Mr Z was the source of the business. Originally the Respondent was instructed to offer £280,000 for the property but these instructions changed and he was instructed to submit an offer for £250,000 and the purchase was to be financed with the loan of £187,500 from Abbey National. The loan from Abbey National was subject to the CML

requirements. The balance of the purchase price i.e. £62,500 was coming from either B or her husband or one of a number of companies with the word “S” in its title.

Mr Lynch stated that there were a number of pieces of correspondence in the file stating that the deposit was to be returned after the sale. Mr Lynch advised that this fact was not disclosed to Abbey National. Mr Lynch stated that the Respondent sent a clear Certificate of Title to the lender confirming that the CML conditions had been complied with. Mr Lynch submitted that this was a clear breach of paragraph 5.8 of the CML Handbook which states:

“You must ask the borrower how the balance of the purchase price is being provided. If you become aware that the borrower is not providing the balance of the purchase price from his own funds and/or is proposing to give a Second Charge over the property you must report this to us if the borrower agrees, failing which you must return our instructions and explain that you are unable to continue to act for us as there is a conflict of interest.”

Mr Lynch referred the Tribunal page 58 of the Inventory of Productions regarding the purchase of Property 1. He advised that this production contained an email dated 14 December 2009 from the Respondent to B stating as follows:

“Dear [B],

This is not proving to be straightforward. The seller’s solicitor will not release loan funds repayment of £62,500 to you because it would be return of funds to an individual and this would breach regulations regarding Money Laundering and we have been asked to confirm that the lenders Abbey have been made aware of the situation. If they are, they will in all likelihood cancel their mortgage offer.

I know that your instructions were not to remit the funds unless there is in place a Mandate for immediate repayment of the funds to you and I will not obviously release any funds unless we are satisfied that your position is protected. However, I cannot see this transaction being able to complete unless either the funds are returned to a different bank account at your end,

[S] Scotland or another company for example, or the funds are remitted by the other solicitor to the seller who then arranges immediate return of the funds to you from his account. If this were a possibility, we would need an assurance that it would happen immediately following on settlement. I suspect that you will not be happy with this suggestion. If not, unless you have other instructions, I think this transaction maybe dead.

I look forward to hearing from you.

Regards,

William Walls”

Mr Lynch advised that the same production also contained a response to that email, an email dated 15 December 2009 from B to the Respondent as follows:

“Dear Willie,

Life is never straightforward.

Seller of [Property 1] who is [R] is to receive the full free proceeds of the sale of his house

Once the proceeds have cleared he is to repay the loan of £62,500 to myself

This transaction is to be guaranteed in writing to yourself by [R's] father and uncle [F]

Hope this is clear to you by it does seem to be the easiest way to conclude this matter

I do realise that I am leaving myself at risk but I have a lot of trust in [R] and [F]

Regards

[B]”

Mr Lynch stated that after the transaction settled, the price was paid to the solicitors acting for the seller and he referred to the Tribunal to Production 37 of the said Inventory which was a copy of a CHAPS transfer document which confirms that the repayment of the deposit was made to B from the seller. Mr Lynch stated that it was clear that there was not only a failure to notify the lender of the position regarding the deposit but the emails make it clear that the Respondent was actively avoiding telling the lender and misleading the lender and that he knew what the consequences of disclosure of the information would be.

Mr Lynch then turned to the second property which is referred to in paragraph 4(b) of the Complaint. Mr Lynch referred the Tribunal to pages 175 and 176 of the Second Inventory of Productions in this case which is a Disposition by G to E of the property at the price £12,000. The Disposition narrates that E sold the property to D for the same price and then G with consent of E disposed the property to D and the date of entry was 19 September 2008. Mr Lynch then referred the Tribunal to page 179 of the said Inventory which was a Disposition by D to E for the sum of £18,000 with entry as at 9 April 2010 and then E selling on to C for a price of £63,000 with the same date of entry.

Mr Lynch advised that in this transaction the Respondent acted for everyone, D, E, C and also for the Royal Bank of Scotland who lent C £44,100 for the purchase of the shop. Mr Lynch advised that the Respondent failed to report to the lender that the seller had owned the property for less than six months and that there had been between the two transactions an increase of 350% in the purchase price. Mr Lynch submitted that the Respondent should have expected the lender to take these matters into consideration in deciding whether or not to lend on the property. Mr Lynch advised that the funds were drawn down and distributed in the manner set out in paragraph 4(b) of the Complaint.

Mr Lynch advised that the Respondent also failed to report to the lenders that the seller was not the heritable proprietor of the property and that the Respondent was acting for the purchaser, seller and owner and in a situation where a conflict of interest could arise.

Mr Lynch stated that the Respondent had failed to provide a terms of business letter to the owner or the seller as required by the Solicitors (Scotland) Practice Rules 1986 although he did send a terms of business letter to one of directors of the seller. Mr Lynch stated that the Respondent also failed to notify the lender that the settlement which had been originally scheduled for 9 April 2010 was delayed for six days.

Mr Lynch referred the Tribunal to Production 112 of the said Inventory which is an email sent from the Respondent's office on 11 February 2010 to F. Mr Lynch referred to the second paragraph which stated:

“We understand that of the balance of £18,900 payable by [C] you will be personally advancing this sum (per [E]) to [C] with this sum to be deducted from the purchase price payable by her under a separate Undertaking entered into with her for repayment of the said sum over a period of six months following the date of entry.”

Mr Lynch then referred the Tribunal to Production 111 of the said Inventory which was a Certificate of Title. Mr Lynch stated that although the copy in the bundle was unsigned the principal was however signed and sent to the Royal Bank of Scotland by the Respondent.

Mr Lynch then referred the Tribunal to Production 104 of the said Inventory which was an email from Mr Y at the Royal Bank of Scotland to McQuittys marked for the attention of Mr X. Mr Lynch drew the Tribunal's attention to the second paragraph of that email which stated:

“[F] – Loan of £130,000 plus fees agreed with the purchase of Property 5. This is under [S]. Loans subject to his contributions of £70K, confirmation of purchase price, sight of satisfactory lease and all security to be in place.”

And to paragraph 4 of that email which stated:

“[C] - £44,100 loan to be agreed to assist with the purchase of [Property 2]. Again subject to her contribution of £19K, confirmation of purchase price and security in place. Her loan repayment of £380 per month over a 15 year term.”

Mr Lynch stated that it was clear from the email that the bank thought that the deposit was coming from C rather than being paid by a third party. Mr Lynch referred the Tribunal to page 103 of the said Inventory which was a letter from McQuittys to the Royal Bank of Scotland stating that Mr Walls was the solicitor acting in this transaction.

Mr Lynch indicated that as detailed in the Complaint the Respondent’s failures in this transaction were similar to those in the first transaction.

Mr Lynch then moved on to the third transaction where the Respondent was instructed to act on behalf of H in respect of the purchase of Property 3. Mr Lynch indicated again it was apparent from the file that the business was introduced by Mr Z who is mentioned in Production 98 of the Third Inventory of Productions. That production is a residential conveyancing and estate agency form relating to Property 3. There is a handwritten note on the form stating –

“Contact from Mr Z who is arranging mortgage.”

Mr Lynch advised that on 12 April 2011 the Respondent sent an offer to solicitors in Rutherglen to purchase property 3 on behalf of H. Entry was to be 26 April 2011. A qualified acceptance was issued on 13 April 2011 but no bargain was never concluded. On 28 April 2011 the Respondent received from his client, H, a bank draft for £11,570.60 and the Respondent took it and banked it. He failed to obtain confirmation from the bank of the name of the account against which the draft had been drawn.

The Respondent had accepted a photo card driving licence as evidence of his client’s identity and address. He was then put on notice that this information was not accurate. In particular he received a telephone call from I who told the Respondent she was his

client's wife when H had assured the Respondent that he was single. I had said that H no longer lived at the address which appeared on his driving licence. Despite this the Respondent did not take any of these matters up with his client. Instead he accepted instructions from his client to return the funds (less the costs of the bank transfer) to a third party, J. The Respondent then made a payment to that individual.

Mr Lynch submitted that having been put on notice that his client may not have been who he appeared to be, the Respondent in passing on the funds to a third party having made no money laundering enquiries whatsoever, was a clear breach of the Money Laundering Regulations and the Proceeds of Crime Act 2002, Part 7.

Mr Lynch advised that the productions disclosed that a report was made belatedly following this matter coming to attention of the Law Society inspectors.

Mr Lynch referred the Tribunal to page 25 of the said Inventory, a letter dated 11 May 2011 from J. Mr Lynch stated that no enquiries were made by the Respondent regarding J. Mr Lynch referred the Tribunal to page 23 of the said Inventory, an email dated 23 May 2011 which is an internal email from the firm of McQuittys. Mr Lynch stated that the Respondent was the author of the email. The email stated:

“The balance of funds we are holding is not from our client, but from his cousin. Obviously we cannot use the funds, so contact Mr Z and get the bank details so we may return the funds. Advise him that there will be £24 bank charges, so that will need to be added to the amount when the client transfers funds from his own account, details of which we also require. We also need the principal letter from the client's cousin, as there is only a fax on file.”

Mr Lynch then referred the Tribunal to page 22 of the said Inventory which is an attendance note recording the conversation with Mr Z when Mr Z provided details of J's bank account. Mr Lynch then referred to page 21 of the said Inventory an internal email from the firm of McQuittys which Mr Lynch advised was from the Respondent. It stated:

“Royal Bank details on file, so please return funds under deduction of bank charges. Give full narrative on ledger obviously, which will satisfy the Law Society.”

That email was sent on 23 May 2011 at 12:42.

Mr Lynch then referred the Tribunal to pages 17 and 18 of the said Inventory which is a CHAPS transfer showing the payment to J on 23 May 2011.

Mr Lynch referred the Tribunal to page 16 of the said Inventory, an attendance note dated 24 May 2011 recording a telephone conversation between the Respondent and H in which the Respondent states:

“If you are proceeding with the purchase, you will need to get [J] to transfer the funds to your account and then you will need to transfer the funds to us.

However, it may well be that you do not now wish to proceed with the purchase. Advising that in this situation we will need written confirmation from you and there will be some charges for our work carried out so far – approximately £150.

You may come through to the office later today or tomorrow but you will let us know. In the meantime you should contact Mr Z to see if this matter is proceeding or not because the mortgage instructions received from the Halifax related to the wrong property.”

Mr Lynch stated that the final paragraph of that email begs the question who sent the money and why it was sent in the first place. Mr Lynch submitted that it should have been a decision for the client as to whether the transaction was proceeding rather than Mr Z. Mr Lynch submitted that this shows that the Respondent was aware of the risk in this transaction.

Mr Lynch invited the Tribunal in all the circumstances to make a finding of professional misconduct as set out in the Complaint.

Mr Lynch advised that with the consent of Mr Collins he wished to bring further matters to the attention of the Tribunal which are not in this Complaint. He stated that the Law Society have indicated to him that there are a number of other matters pending regarding the Respondent. In particular, these relate to operating with a deficit on his client account, failing to maintain adequate records to show the true financial position of the firm, charging excessive fees to a number of clients, failing to account to landlords for money received from tenants, a single failure to stamp and record a disposition, abuse by the Respondent of a Power of Attorney granted by his aunt and taking money from bank accounts for his own personal use.

Mr Lynch stated that in respect of one client, a trust, the extent of the overcharging was around £10,000 and in relation to an executry there was an overcharge of around £2,000.

Mr Lynch stated that he understood that the Respondent does not intend to deny any of the matters.

Mr Lynch stated that both he and Mr Collins consider that this is relevant information for the Tribunal when considering sanction.

SUBMISSIONS FOR THE RESPONDENT

Mr Collins indicated that there were no Answers lodged in this case due to a misunderstanding between himself and the Respondent. Mr Collins stated that he thought that all matters had been put on hold by the Law Society and then was made aware that this Complaint was before the Tribunal.

Mr Collins advised that there is no dispute regarding the facts of this case. He stated that the Respondent has been suspended from practice since November 2012 and has no intention of returning to practice or seeking a practising certificate.

Mr Collins advised that the Respondent accepts that he was ill-equipped to cope with the practice he had. He accepts the facts as narrated. In relation to the firm of

McQuittys, the Respondent was committed to the purchase of that practice before the general economic downturn. Mr Collins stated that a number of factors contributed to wrong decisions made by the Respondent regarding the practice. He stated that the Respondent's view was that these were compounded by the fact that he was a sole practitioner and wanted to protect his employees.

Mr Collins stated that the Respondent had had health difficulties and suffered a breakdown. The Respondent went through a personal sequestration on 19 February 2014 as a result of financial difficulties. Mr Collins stated in relation to the other matters before the Law Society regarding financial issues, it is accepted that money was used by the Respondent to plough back into the business.

Mr Collins stated that the Respondent accepts the facts relating to all matters currently before the Tribunal. In relation to the matters contained in SLCC correspondence Mr Collins stated that all were accepted apart from the allegation regarding the Power of Attorney.

Mr Collins stated that he was not instructed to address the Tribunal regarding disposal. Mr Collins asked the Tribunal to defer any publicity pending potential criminal matters.

Mr Collins stated that the Respondent was anxious for the whole matter to be brought to an end and confirmed that the Respondent no longer wishes to be a solicitor.

In relation to the Respondent's financial position, Mr Collins advised that the Respondent had a seasonal job through a golf company and hopes to start this again later in the year but is currently dependant on his wife for finance although he has some personal property.

In response to a question from a member of the Tribunal, Mr Lynch confirmed that the Law Society does not dispute the Respondent's medical history.

DECISION

The Tribunal noted that the Complaint against the Respondent involved three transactions between September 2009 and May 2011. Two of the transactions involved failures by the Respondent to report key aspects of the transactions to the lenders in terms of the common law standard and a failure in one of the transactions to comply with the obligations imposed on him as provided for within the CML Handbook. In two transactions there was a failure by the Respondent to act with absolute propriety and to protect the interests of his clients who were the lenders. The Tribunal was of the view that when a solicitor takes instructions from a lender he owes that lender the same duties of care as any other client. The risks of mortgage fraud have been highlighted in the Law Society's Journal and the profession is well aware of them. In relation to the third transaction, although it did not proceed, it involved serious failures on the part of the Respondent to comply with the Money Laundering Regulations. The correspondence in the three transactions detailed in the Complaint disclosed a pattern of failure on the part of an experienced solicitor to abide by the clear rules of his profession which are in place to protect the public and lending institutions from fraud. In view of this the Tribunal considered that the failures admitted by the Respondent amounted to a course of conduct which would be viewed by reputable solicitors as serious and reprehensible and therefore amounted to professional misconduct in terms of the test set out in the Sharp case.

In considering sanction, the Tribunal took account of the Respondent's medical condition, the fact that the three transactions were undertaken over a fairly short period of time and that the Respondent has not been in practice since November 2012. In addition, the Tribunal noted the Respondent had appeared at the hearing, accepted that he was guilty of professional misconduct and that it had been stated on his behalf that he had no intention of returning to practice. The Tribunal considered that it could not take into account the information provided regarding potential future disciplinary matters involving the Respondent. However, in view of the seriousness of the Respondent's failures as outlined in the Complaint the Tribunal considered it was necessary for the protection of the public that the Respondent be suspended from

practice for a period of five years to prevent him returning to practice within that time should his circumstances change.

The Tribunal made the usual order for expenses and agreed to defer publicity pending the outcome of criminal proceedings against the Respondent.

Alan McDonald

Vice Chairman